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Annex: Provisional Regulations On Lawyers of the People's Republic of China*

To some Western readers, the function of Chinese lawyers as described in translations of the Provisional Regulations will appear comparable to the function of lawyers in the United States and many Western European countries. In at least one news release following enactment of the law, however, the government of the People's Republic of China denied any apparent similarity. A reprint of the Regulations and the Chinese Government's position as published in the Renmin Ribao, the official government newspaper, follows.—eds.

I. THE FUNCTIONS AND RIGHTS OF LAWYERS

Article 1

Lawyers are the state's legal workers and function to give legal assistance to the state organs, enterprises, establishments, mass organizations, the people's communes and the citizens in order to ensure the correct implementation of law and protect the interests of the state and the collectives as well as the legitimate rights and interests of the citizens.

Article 2

The major services of the lawyers are:

- a. To accept the instructions of the state organs, enterprises, establishments, mass organizations and the people's communes to act as their legal advisers;
- b. To accept a litigant's instructions to act as a representative in a civil case.
- c. To accept a defendant's instructions or the assignment of a people's court to act as an advocate in a criminal case; accept the instructions of a party who initiates a private prosecution and the instructions of a victim of a public prosecution or their close relatives to act as a representative in a lawsuit;
- d. To accept instructions to act in noncontentious matters and to render legal assistance or to act as a representative in mediation and arbitration;
- e. Explain questions on law and draft documents in a lawsuit and other related legal matters.

Lawyers must propagate the socialist legal system in all their work.

* Adopted by the 15th Session of the Standing Committee of the 5th National People's Congress, August 26, 1980. *Translated in* COMMERCIAL LAWS AND BUSINESS REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA—1949–1983, at 457 (V. Sit ed. 1983). Reprinted with the permission of Eurasia Press Inc.

Article 3

In performing their services, lawyers must serve the cause of socialism and the interests of the people, act on the basis of facts and take the law as their criterion.

Lawyers must carry out their work according to the law and are protected by the law. No organization or person is permitted to interfere with lawyers' work.

Article 4

When acting as legal advisers, lawyers are responsible for giving advice, drafting and examining legal documents on legal questions that occur in the course of business of an organization that instructed them and act as representatives in law suits, mediation and arbitration in order to safeguard the legitimate rights and interests of the organization.

Article 5

Acting as representatives in litigation and nonlitigation matters, lawyers are responsible for safeguarding the legitimate rights and interests of the client within the authority of the entrustment.

The litigant acts and legal acts of the lawyer have the same legal effect as that of the client within his authority as a representative.

Article 6

Acting as advocates in a criminal case, lawyers are responsible for safeguarding the legitimate rights and interests of the accused on the basis of facts and the law.

In case of untruthful representation by the accused in a case, a lawyer can refuse to act as his advocate.

Article 7

In performing their work in lawsuits, lawyers are entitled to obtain research materials relevant to the case according to regulations and to make inquiries about related organizations and persons. In acting as advocates in criminal cases, lawyers have the right to meet and correspond with the accused in custody.

Organizations and persons concerned must assist lawyers on the above.

Lawyers have the responsibility to maintain secrecy when they come into contact with state secrets and personal secrets in their work.

II. THE QUALIFICATIONS OF LAWYERS

Article 8

Those citizens who cherish the PRC, support the socialist system and have the right to vote and stand for election are eligible to be lawyers after an examination and if they have the following qualifications:

- a. Those who graduated from university or college law departments and have engaged for 2 or more years in judicial work, teaching or research or law;
- b. Those who have professional legal training or worked as judges or procurators in the people's courts and the people's procuratorates;
- c. Those who have received higher education, have done 3 or more years of economic, scientific and technological work, are well versed in their profession and in relevant laws and decrees related to the profession, have gone through professional legal training and are suitable for the position of a lawyer;
- d. Those who have attained the same law level as listed in a and b possess the cultural level of higher schools and can perform the functions of a lawyer.

Article 9

After obtaining the necessary qualifications for lawyers, approval and a certificate must be obtained from the judicial departments (bureaus) of provinces, autonomous regions or municipalities directly under the central government; such certification must also be entered in the record of the PRC Ministry of Justice. Upon discovery of improper examination or approval, the ministry of Justice must instruct the judicial departments (bureau) [sic] to conduct an inquiry into the matter therewith.

Article 10

Those who have acquired the qualifications of a lawyer but are unable to leave their job can act as part-time lawyers. Organizations concerned must support such part-time lawyers.

Personnel who are in active service in the people's courts, the people's procuratorates and the people's public security organs cannot be part-time lawyers.

Article 11

Those who have graduated from university or college law departments or have gone through professional legal training can act as trainee-lawyers after obtaining approval from the judicial departments (bureaus) of provinces, autonomous regions or municipalities directly under the central government by passing an examination.

The training period for trainee-lawyers is 2 years. Upon completion of the training period, trainee-lawyers are qualified as lawyers in accordance with the procedure stipulated in Article 9 of the provisional regulations; the training period can be extended if the trainee-lawyers fail to pass the examination.

Article 12

Lawyers who are highly incompetent may be deprived of their qualifications by decision of the judicial departments (bureaus) of provinces, autonomous regions and municipalities directly under the central government and with the approval of the Ministry of Justice.

III. WORK ORGANS FOR LAWYERS

Article 13

Legal advisory offices are work organs for lawyers to perform their duties.

Legal advisory offices are public institutions under the organizational leadership and professional supervision of state judicial administrative organs.

Article 14

Legal advisory offices are established at the country, city and municipal district levels. When necessary, specialized legal advisory offices can be established with the approval of the Ministry of Justice.

Legal advisory offices are not subordinate to each other.

Article 15

The principal functions of a legal advisory office are to help lawyers to carry out their professional work and to organize lawyers to study politics and acquire professional knowledge in fields of law as well as to sum up and exchange work experience.

Article 16

A legal advisory office shall have one director and may have deputy directors if necessary. The director and deputy directors are to be elected by the lawyers in that office and approved by the judicial department (bureaus) of provinces, auton-

omous regions and municipalities directly under the central government. They are elected for a term of 3 years and are eligible for re-election.

The director and deputy directors of a legal advisory office shall lead the work of the legal advisory office and they must also perform legal work.

Article 17

When lawyers are requested to handle cases, instructions shall be accepted and service fees shall be collected by the legal advisory office on a unified basis.

In assigning cases to lawyers, the legal advisory office shall assign lawyers named by clients as far as possible to meet their requests and according to actual conditions.

Article 18

A legal advisory office may appoint lawyers to carry out professional activities in other localities and the local legal advisory office shall provide them with assistance.

Article 19

A lawyers' association shall be established to protect the legitimate rights and interests of lawyers, to exchange work experience, to promote lawyers' work and to promote contacts between legal workers both at home and abroad.

The lawyers' association is a social organization and its organizational statute shall be worked out by the lawyers association.

IV. SUPPLEMENTARY ARTICLES

Article 20

The standards for the title of a lawyer, the regulations on rewards and penalties for lawyers and the measures on their service fees will be separately worked out by the Ministry of Justice.

Article 21

These regulations shall go into force on January 1, 1982.

Renmin Ribao Discusses Regulations For Lawyers†

The “provisional regulations concerning lawyers of the People’s Republic of China” promulgated by the Fifth NPC Standing Committee on [sic] August 1980 (see *Renmin Ribao* 28 August 1980, p 5) has formally come into force as of 1 January 1982. This will give a new impetus to the practice of the lawyer system in China.

The lawyer system is an important part of our socialist legal system. After more than 2 years of restoration and building, a contingent of lawyers has developed out of nothing. China now has more than 5,500 lawyers, and the legal profession is beginning to develop. The lawyers in all parts of the country are devoted to their work. They have done a great deal of useful work and they are welcomed by the masses.

However, there are also many people who do not understand the lawyer system. They think that lawyers specialize in pleading cases for the accused. They even regard the lawyers of our country as the legal “professionals” of capitalist countries and look upon them in a different light. We must carry out unceasing propaganda to dispel this kind of misunderstanding so that people will correctly understand the role of lawyers, show concern for them and support them in their work.

The “provisional regulations concerning lawyers” stipulates that the lawyers of our country are legal practitioners of the state. This stipulates that their character and social position are different from those of the lawyers of capitalist countries and states clearly the seriousness of their responsibility. They are actually an important force for upholding the legal system of the state in the domains of politics, economy and society. The masses have reason to call our lawyers “defenders of the law.” For example, by means of the interaction between both sides in the trial, a lawyer pleading a case in court plays a promotional role in the correct determination of the case and the appropriate application of the law, assists the court to correctly handle the case and safeguards the legitimate rights of the accused and ensures accurate punishment for the crime. This in fact is the correct practice of upholding the law. According to the stipulations of “provisional regulations concerning lawyers,” apart from engaging in criminal litigation, the legal profession has another four vital functions. By means of these functions, lawyers are able to extensively serve society. For example, they can act as agents in litigious or nonlitigious civil and economic disputes and also act as legal advisers to enterprises and units. This will contribute to safeguarding the interests of the state and the collectives as well as the legitimate interests of the

† *Renmin Ribao Discusses Regulations for Lawyers*, *Renmin Ribao*, Jan. 11, 1982 at 3 (in Chinese) (FBIS trans.).

citizens. This will contribute to carrying out work according to law, upholding social and economic order and promoting the development of economic construction. Facts in many places have proved that because lawyers have legal knowledge, people have faith in them. In their professional capacity they can clear up points of law in the minds of the people in a manner acceptable to the parties concerned. Therefore, they are able to advise against unjustified litigation, bring about reconciliation and play the role of putting an end to litigation and disputes and preventing contradictions from intensifying.

To implement the "provisional regulations concerning lawyers," we must continue to expand the contingent of lawyers. The number of lawyers we have at present can hardly satisfy the existing demand. Because of the abolition of law schools and faculties by Lin Biao and the "gang of four," very few of our present personnel are law school graduates. For a considerable period to come, we not only must rely on selecting specialized legal personnel but also must choose some political and law cadres as well as other suitable personnel with practical experience to carry out our legal work. We must draw on qualified personnel from other departments to serve concurrently as lawyers in order to supplement our forces. Based on the standard stipulated by the "provisional regulations concerning lawyers" and by means of strict exams, we should approve those who qualify to become lawyers. As for those who are unable to qualify for the time being, we should arrange for them to receive practical training in law offices. We must strengthen specialized rotational training and keep on improving the vocational level of lawyers. Apart from the running of training classes for lawyers by the central authorities and various localities and the training of qualified lawyers in general by law schools, we must also pay attention to the training of qualified lawyers capable of dealing with cases involving foreign economic disputes to keep abreast of China's economic construction needs.

There is a great future for the development of the legal profession in China. Under the leadership of the party, lawyers should rise with force and spirit, conscientiously implement the "provisional regulations concerning lawyers," adhere to the socialist orientation, make a success of their work and resolutely struggle to safeguard the socialist legal system and the four modernizations.